"Truly, to inform a person that others will annoy or injure him unless he acts in a particular way cannot of itself be actionable, whatever the motive or intention of the informant may have been" (*per* Lord LINDLEY). No doubt, the wide diversity of opinion among the judges as to what inferences of fact might properly be drawn from the evidence bearing on Allen's conduct [the judges summoned to advise the Lords were requested to answer one question only: "Assuming the evidence given by the plaintiffs' witnesses to be correct, was there any evidence of a cause of action fit to be left to the jury?"] caused much confusion in *Allen* v. *Flood;* yet the present construction of that decision seems forced and narrow. If it rested on this ground, why was it necessary for the House of Lords to have the case twice argued before it, to keep it under consideration for over a year, and to resort to the almost obsolete practice of summoning the judges? The Lords might have satisfied themselves with a brief reference to the authorities, instead of writing their very learned and elaborate opinions.

Laying aside the element of conspiracy in *Quinn* v. *Leathem*, we have a malicious interference with the plaintiff's business, for "one's right to deal with others is nugatory, unless they are at liberty to deal with him if they choose to do so;" and a violation of this right causing damages, is actionable, the Lords declare, in the absence of lawful justification or excuse. But, inasmuch as one's right to carry on his business as he sees fit, is no better or higher than his right to do other acts not prohibited by law, it seems to follow that any intentional violation of one's rights which results in damage, if without justification or excuse, gives rise to a cause of action. And this doctrine, we take it, is the principle really underlying the decisions in *Lumley* v. *Gye* (1853) 2 E. & B. 216, and *Bowen* v. *Hall* (1881) 6 Q. B. Div. 333,—not the theory that one has a sort of right *in rem* not to have the performance of his contracts interfered with by third parties.

Because of the scarcity of decisions on the point, possible grounds of justification or excuse can only be suggested. Where the injury complained of results from legitimate trade competition, either by an individual or by a combination, no recovery may be had, *Mogul S. S. Co.* v. *McGregor* [1892] A. C. 25; and so, too, when it is caused by the lawful exercise of contract or property rights. *Bradford Corporation* v. *Pickles* [1895] A. C. 587. Probably in cases which might come within the general doctrine of privilege, the defendant would also escape liability. In *Quinn* v. *Leathem* the acts of the defendants were clearly not excusable, their sole purpose being to injure the plaintiff.

PEOPLE *v.* MOLINEUX.—Two rules of evidence established at common law have been carefully considered by the New York Court of Appeals in the recent case of *People* v. *Molineux* (Oct. 1901) 61 N. E. 286. The one, that the state cannot prove against a defendant any crime not alleged in the indictment, either as a foundation for a separate punishment, or as aiding the proofs that he is guilty of

the crime charged, has been upheld. But the other, as to comparison of handwriting, has, it is held, been changed by statute.

The rule that evidence of other crimes is inadmissible to prove the guilt of a defendant had its origin at an early period of English history, and is one of the leading features which distinguish the criminal law of the English-speaking peoples from that of the Latin races. Its object is to keep from the jury facts which, if admitted, would show the bad character of a defendant and would inevitably tend to create a doubt as to his innocence—a result inconsistent with the fundamental maxim of our law that a man is presumed to be innocent until proved to be guilty. *Schaffner* v. *Commonwealth* (1872) 72 Pa. 60. In fact, such evidence is also barred by the rule that the bad character of a defendant may not be shown, unless evidence that he has a good character is offered, or unless the defendant becomes a witness in his own behalf. *People* v. *White* (1835) 14 Wend. 111; *People* v. *Hickman* (1896) 113 Cal. 80. Under the guise of exceptions, encroachments have been made upon this rule. Such exceptions are, in the principal case, classed under five heads by WERNER, J. (at p. 294): "Generally speaking, evidence of other crimes is competent to prove the specific crime charged when it tends to establish (1) motive; (2) intent; (3) absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; (5) the identity of the person charged with the commission of the crime on trial." The defendant was charged with the murder of Mrs. Adams, having, as alleged, sent by mail an apparently harmless patent medicine, after adding a deadly poison, to one Cornish, who innocently gave it to the deceased. The attorney for the people gave in evidence the circumstances surrounding the death of one Barnet, who, as was alleged, was killed by the same kind of poison also concealed in a patent medicine. That there was not one motive for the two crimes was shown by the district attorney himself, and hence it becomes unnecessary to discuss that particular exception to the general rule. Nor was it necessary to introduce the evidence in order to show intent or the absence of mistake or accident, for both could be justly implied from the facts of the case. That the evidence was admissible to prove a common plan or scheme seems, at first, plausible, as the means used were the same. But that is the only point of resemblance, for the two crimes were in no way connected. We now come to the last exception: does the evidence of the killing of Barnet tend to identify the defendant with the murder of Mrs. Adams? PARKER, C. J., in a dissenting opinion concurred in by GRAY and HAIGHT, JJ., contended that the evidence showed that one mind planned and, one person carried out both crimes. Since the two crimes were not connected it is not clear why the evidence should be admitted. It is only on rare occasions that the evidence of one crime will tend to identify the defendant as the author of the crime on trial. Thus in *People* v. *Rogers* (1887) 71 Cal. 565, the defendant was convicted of murder, committed while robbing the house of

the deceased; evidence was admitted that at another time, the defendant had stolen a chisel and a pistol and it was proved that he had used these same weapons in perpetrating the crime charged, thus showing a logical connection between the two crimes, and identifying the defendant. But in the principal case, it was not proved that the defendant had sent the poison to Barnet, the whole Court being agreed that the evidence of the physicians, to the effect that Barnet had been made ill by powders sent through the mails, was hearsay and therefore incompetent.

The result reached by the majority of the court shuts out the evidence relating to the death of Barnet. It now becomes necessary to consider the ruling as to the comparison of handwriting. Counsel for the defendant argued that, as the genuineness of the address on the poison package was not in issue, it was error to allow a comparison with other writings in order to prove that it had been written by the defendant. The Court dismisses this objection. Now, at common law, handwriting was allowed to be proved, usually, by witnesses who had seen the defendant write or by those who had had correspondence with him, *Doe d. Perry* v. *Newton* (1836) 5 Adol. & E. 514; *Doe d. Mudd* v. *Suckermore* (1836) 5 Adol. & E. 703, and in certain other ways to be treated of below. But it would seem from a careful examination of the cases that no such comparison was permitted unless the writing to be proved was in issue. The common law standards of comparison proving to be too narrow, the New York legislature passed c. 36 of the Laws of 1880. This statute treats of what papers may be admitted "to prove the genuineness, or otherwise, of the writing in dispute." Had the statute read of "the writing in issue", the matter would never have been in doubt. The first case under the Laws of 1880 was *Peck* v. *Callaghan* (1884) 95 N. Y. 73, where RUGER, C. J., after deciding the case, said by way of *dictum* (p. 75), "The disputed writing referred to in the statute, relates only to the instrument which is the subject of the controversy of the action". By Laws of 1888, c. 555, the Laws of 1880, c. 36, were amended in order, as said by WERNER, J., in the principal case (at p. 305), "to avoid the construction confining the standards of comparison——", as laid down in *Peck* v. *Callaghan*, *supra*. Nothing was said as to what was meant by "disputed writing," the term again used in the amending statute. In 1892, in *People* v. *Murphy*, 135 N. Y. 450, the Court, per MAYNARD, J., said that the question as to "disputed writing" could not be reviewed, as no objection had been taken at the trial. In *People* v. *Kennedy* (N. Y. Sup. Ct. Cr. Term, 1901) 34 Misc. 101, FURSMAN, J., held that there could be no comparison of handwriting, under Laws of 1888, c. 555, unless the disputed writing were in issue. In his opinion he points out that the statute was intended to enlarge the standards of comparison only, and was in no other way to affect the common law rule, which did not admit of comparison unless the "disputed writing" was in issue. While this decision of the Criminal Term has, in effect, been overruled by the principal case, it is

cited here to show that the question has been raised, for WERNER, J., says (p. 306), "The precise question appears never to have been decided in any of the courts of this State probably for the reason that the bar have deemed the statutes too plain to warrant so fanciful a construction as the defendant's counsel attempts to give them here". Moreover the cases cited by WERNER, J., (p. 306), to show that since 1888 comparisons between disputed writings, merely evidentiary in character, and accepted standards, have been sanctioned by the Court, do not stand for that proposition. In *Sudlow* v. *Warshing* (1888) 108 N. Y. 520, the validity of a deed was in issue and a comparison of handwriting would have been permitted at common law. *McKay* v. *Lasher* (1890) 121 N. Y. 477, was an action of trespass; the defendant set up title under an alleged deed, the validity of which was contested by the plaintiff; the deed being thus put in issue, a comparison of writings was competent. In *Dresler* v. *Hard* (1891) 127 N. Y. 235, evidence was admitted to explain an abbreviation in a writing of evidentiary nature; there was no question as to the genuineness of the paper. In *People* v. *Sliney* (1893) 137 N. Y. 570, the defendant was accused of murder, a note said to have been written by him was put in evidence and a comparison of writings was allowed. No objection was taken at the trial; hence, under the *Murphy* case *supra*, the Court could not have decided the point had it been raised on appeal. Furthermore, as the defendant admitted that he wrote the note, there was no prejudicial error. The same remarks apply to *People* v. *Corey* (1896) 148 N. Y. 476, another murder case, where no objection was made at the trial and where the evidence was, on appeal, excluded for other reasons. In *Insurance Co.* v. *Suiter* (1892) 131 N. Y. 570, the last case cited, the validity of a deed was in issue.

Having reached the conclusion that evidence as to handwriting was admissible although the writing to be proved was not in issue, the Court points out what standards of comparison may be used. At common law a writing could be proved in three ways: first, by persons who had seen the paper written; second, by persons who were familiar with the handwriting of the person charged to be the writer, either because they had at some time seen him write or because they had had correspondence with him; lastly, by a comparison of the disputed writing with other writings already in evidence for other purposes. Comparison was made by the court and the jury. *Doe* v. *Newton supra; Doe* v. *Suckermore supra.* No writings could be introduced merely as standards of comparison. *Randolph* v. *Laughlin* (1872) 48 N. Y. 456; *Miles* v. *Loomis* (1878) 75 N. Y. 288. The reason for this rule was that otherwise too many issues would be raised as to the genuineness of papers introduced as standards, and that the specimens might be selected in a way prejudicial to the defendant. Several statutes were enacted in England to admit of more standards of comparison, and similar statutes were passed in New York in 1880. By the Laws of 1880 as amended by the Laws of 1888, c. 555, "Comparison of a disputed

writing with any writing proved to the satisfaction of the court to be the genuine handwritlng of any person, claimed on the trial to have made or executed the disputed instrument, or writing, shall be permitted and submitted to the court and jury in like manner". The court is united on the point that, since the passing of this statute, any writing proved "to the satisfaction of the court to be genuine," either by common law rules or by the concession or admission of the defendant, may be used in evidence, although not relevant for other purposes. But this is limited by the qualification, "that writings which are otherwise incompetent should never be received in evidence for purposes of comparison" (per WERNER, J., p. 307). From this statement it may be inferred that the "Barnet Letters" can not, at a new trial, be used as standards of comparison, but are incompetent as tending to prove the defendant guilty of another crime.

TAXATION OF CORPORATE FRANCHISES.—The recent case of *State Board of Equalization* v. *People* (Ill. Oct. 1901) 61 N. E. 339, illustrates two methods of assessing corporate franchises for purposes of taxation. The Board of Equalization, having power to assess corporate franchises according to such rules as it might adopt, in 1873 adopted as a basis of assessment the sum of the market value of the shares of capital stock and the market value of the funded debt, less the assessed value of all tangible property. This rule, with unimportant changes, remained in force for a number of years, when the Board eliminated from the basis of assessment the amount of the funded debt. A petition for a writ of *mandamus* was granted, to compel the Board to include in its assessment the amount of the funded debt, the Court holding that though it might have no power to review an assessment of the Board, yet, when property had been assessed at so low a rate as to amount to no assessment at all, it could compel an assessment which would conform to law.

It seems clear that when the value of the capital stock is part of the basis of assessment the value of the tangible property should be deducted, for, although capital stock and total property are not interchangeable terms, corporate property contributes to the value of the capital stock, and to this extent the taxation of corporate property and capital stock involves double taxation. In Pennsylvania, however, it is not so regarded. *Pittsburg Ry. Co.* v. *State* (1870) 66 Pa. St. 77. There is no uniformity in the decisions upon this point. Several States—Alabama, Illinois, Indiana, Vermont, Maryland and (for certain purposes) New York—have recognized the principle above stated in their statutes.

Few of the methods employed in the various States for assessing corporate franchises seem so objectionable as that adopted by the Illinois Board, which eliminates the funded debt. By this method, heavily bonded corporations would, to a great extent, escape taxation, because the capital stock alone would not represent the value of the property. Undoubtedly in all cases an attempt is made to measure the earning capacity of the corporation, but there is no